WORKERS' COMPENSATION ADVISORY COUNCIL

MINUTES ~~DECEMBER 6, 1999 MEETING [1:00 P.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE

The meeting was called to order by Mr. Steve Adams, State Treasurer

Voting members in attendance:
Mr. Jack Gatlin [by proxy to Mr. Neeley]
Mr. James G. Neeley
Mr. Bob Pitts
Mr. Othal Smith, Jr.
Mr. Steve Turner [by proxy to Mr. Witt]
Mr. Carter Witt

Nonvoting members in attendance:
Mr. Tony Farmer [by telephone conference call]
Mr. Jerry Mayo

Ex officio members in attendance:
Ms. Sue Ann Head, Workers' Compensation Administrator
Department of Labor and Workforce Development
[designee for Commissioner Michael E. Magill]

Also present:
M. Linda Hughes, Executive Director
David Wilstermann, Research Analyst

The minutes of the November 9, 1999, Workers' Compensation Advisory Council meeting were unanimously approved.

1. CONSIDERATION OF RECOMMENDATIONS re: UNINSURED EMPLOYERS FUND AND NONCOMPLIANT EMPLOYERS PENALTIES

Linda Hughes, Executive Director, was recognized to present the revised draft proposals concerning the implementation of an uninsured employers fund and a mechanism for enhancing compliance through increased penalties. Ms. Hughes first reviewed with the members a flowchart of the manner by which claims would be accepted by and processed through the fund and explained each step in the process. [A copy of the draft "Uninsured Employers' Fund" flowchart is attached as Exhibit A.]

Ms. Hughes next explained the flowchart for assessment of monetary penalties to employers who are determined to be in violation of the law requiring the employer to secure payment of workers' compensation benefits. [A copy of the draft "Proposed Civil Penalties" flowchart is attached as Exhibit B.] Following discussions, the Advisory Council recommended the proposal be amended by deleting the second layer of penalties and proceeding to a show cause hearing if there is no response from the employer to the first notice from the Department of Labor and Workforce Development.

Lastly, Ms. Hughes explained the proposal for changes in the criminal penalties for noncompliance. The proposal would apply the same criminal penalties to employers as are currently applied to employees who are guilty of workers' compensation fraud.

At the conclusion of Ms. Hughes' presentation, the members of the Advisory Council discussed the proposals. The Advisory Council was in general agreement as to the civil and criminal penalties proposed for noncompliant employers. With reference to the proposed Uninsured Employers Fund, the Advisory Council agreed with the process in principal but elected to delete any specific references as to manner of administration other than the recommendation that the Fund be administered under the auspices of the Department of Labor and Workforce Development. The Advisory Council voted unanimously to authorize staff to prepare a report to the Joint Committee to contain the agreed upon recommendations and to submit the report to the Executive Committee for review prior to its transmittal to the Joint Committee.

Mr. Smith then inquired of the Department as to the status of the Department's report concerning noncompliant employers and when it could be expected. Ms. Sue Ann Head, Administrator of Workers' Compensation, explained that because the Department did not have its new computer system on line until late July, 1999 and, therefore, the Department would not be in a position to produce the report by December 31, 1999 as required. The Department anticipates producing a letter indicating the date by which a report will be available and hopes to have a complete report by July 1, 2000. Mr. Smith noted the report is needed to predict the number of noncompliant employers which may be affected by the proposed Uninsured Employers Fund and penalties.

2. CONSIDERATION OF LAW REQUIRING APPROVAL OF DEVIATIONS [EXCESS OF 20%] FROM APPROVED LOSS COST

TCA §50-6-322, which required an insurance company to obtain the approval of the Department of Commerce and Insurance prior to using a deviation from the loss cost in excess of 20%, sunsetted on June 30, 1999. Mr. Pitts had requested that the Advisory Council review the statute as no discussion of the issue had occurred prior to the statute's sunset date.

Mr. Benn Daley, Department of Commerce and Insurance, was recognized to present the Department's comments concerning the issue. Mr. Daley stressed that the Department was not advocating any position as to whether the law should be re-instituted, but rather was suggesting a better manner by which the law could be administered by the Department if the Advisory Council were to recommend the law be re-instituted.

Mr. Daley noted while the law required the focus of the prior approval process to be on a deviation from the loss cost, the number of significance to the insurance companies is the bottom line multiplier. This resulted in confusion as to how the process for prior approval would be reviewed and resulted in the filing of mistaken and/or erroneous information by companies in a effort to support the desired end result of a specific multiplier. It also resulted in some insurance companies not realizing their multiplier required approval prior to its use in issued policies. Mr. Daley stated use of the bottom line multiplier as the trigger would clarify to insurers which filings require prior approval and would result in easier administration. Mr. Daley indicated if the law is re-instituted and the change made to use a specific multiplier as the trigger would result in the Department being able to better enforce and apply the law.

After discussion of the issue, the Advisory Council voted unanimously to make the following recommendation to the Joint Oversight Committee:

> Enactment/re-enactment of a statute to require the Commissioner of Commerce and Insurance to approve any multiplier of less than 1.00 or greater than 1.50 prior to its use by an insurance company; to require all such multipliers be reported to both the Advisory Council and to the Joint Oversight Committee; and to provide for the expiration of the statute after a three year period.

The meeting was adjourned at 3:20 p.m.